

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

HENRY DE JESUS PAYANO-FERNANDEZ §

VS. § CIVIL ACTION NO. 1:07-CV-350

JODY R. UPTON §

MEMORANDUM ORDER OVERRULING PETITIONER'S OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Petitioner Henry de Jesus Payano-Fernandez, a.k.a. Henry Payano, a prisoner confined at the Federal Correctional Complex in Beaumont, Texas, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

The court ordered that this matter be referred to the Honorable Earl S. Hines, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge. The magistrate judge recommends dismissing the petition for lack of subject matter jurisdiction.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Petitioner filed objections to the magistrate judge's Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes the objections are without merit. Under the REAL ID Act of 2005, Pub.L. No. 109-13, 119 Stat. 231, federal district courts do not have jurisdiction over habeas petitions attacking removal orders.

Amouzadeh v. Winfrey, 467 F.3d 451, 454 (5th Cir. 2006). Because this petition was not pending when the REAL ID Act was enacted, it would be improper to transfer the petition to the appellate court. *Esogbue v. Gonzales*, 2007 WL 1026419, at *1 (5th Cir. March 30, 2007).

ORDER

Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

So **ORDERED** and **SIGNED** this **9** day of **August, 2007**.



Ron Clark, United States District Judge